

REAL ESTATE ACCESS AGREEMENT

This Real Estate Access Agreement (“Agreement”) is made and entered this ____ day of February, 2017, by and between the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic under the laws of the State of Minnesota (“Owner”) and Confluence Development LLC, a Minnesota limited liability company (“Developer”).

RECITALS

WHEREAS, Owner is the Economic Development and Redevelopment Authority in and for the City of Hastings, a Minnesota municipal corporation.

WHEREAS, Owner is the owner of improved real property located generally at 200 West 2nd Street, Hastings, Minnesota and legally described on the attached Exhibit A (the “Real Property”).

WHEREAS, Owner and Developer have entered into that certain Purchase and Development Agreement dated January 18, 2016 (the “Purchase Agreement”) establishing the terms by which Owner is selling to Developer and Developer is purchasing from Owner the Real Property and by which Developer shall advance its proposal to develop the Real Property through the construction of a mixed use apartment/commercial development together with related improvements including riverfront improvement.

WHEREAS, Section 4.10 of the Purchase Agreement provides that Owner may grant to Developer early (pre-closing) access to the Real Property for the purposes of “undertaking limited and identified pre-development, renovation, and construction activities” upon execution of an access agreement.

WHEREAS, as a part of required environmental remediation of portions of the Real Property, Owner and Developer have determined that portions of the floorboards above crawl space areas should be removed to provide access for environmental remediation work including treatment of contaminated soils. Prior to removal of the floorboards, Developer has proposed to remove, at Developer’s expense, non-load bearing interior walls in the area where floorboards will be removed. The locations of the proposed work are described and depicted in the blue shaded areas and the photographs contained in the attached Exhibit B. The floorboard and non-load bearing interior wall removal and the treatment of contaminated soil is hereinafter referred to collectively as the “Work”. Developer’s structural engineer and a structural engineer representing the Owner have approved the Work.

WHEREAS, as authorized under Section 4.10 of the Purchase Agreement, Owner is willing to grant to Developer the right to access the Real Property for the purpose of undertaking the Work, subject to the limitations and conditions set forth herein.

WHEREAS, the parties wish to reduce their agreement regarding Developer's access to the Real Property to writing.

NOW, THEREFORE, in consideration of the covenants and obligations of the parties hereto, Owner and Developer hereby agree as follows:

Section 1. Right of Access, Indemnification and Insurance. Owner hereby grants to Developer, its employees, agents and independent contractors, a non-exclusive license to enter the Real Property during normal business hours and upon reasonable prior notice to Owner for the limited purpose of performing the Work. Except as authorized herein or in the Purchase Agreement, Developer shall not perform any excavation, demolition or construction beyond the scope of the Work without the prior written consent of Owner. Developer shall restore any damage to the Real Property caused by the Work, provided that the parties agree and understand that the nature of Developer's Work is demolition and removal of materials from the Real Property, as is set forth above. Developer agrees to indemnify and hold Owner and the City of Hastings harmless from all liabilities, damages, claims, liens, judgments, fees and expenses (including reasonable attorney's fees and costs) incurred by Developer and arising out of any such entry. The foregoing indemnity shall survive the term of this Agreement, any closing on sale of the Real Property to Developer, or earlier termination of this Agreement or the Purchase Agreement. Upon request of Owner, Developer shall deliver to Owner copies of any reports Developer obtains in connection with the Work. Prior to entering the Real Property, Developer shall obtain a policy of commercial general liability insurance with a company licensed to do business in the State of Minnesota with a single combined limit of not less than one million dollars (\$1,000,000.00) providing coverage of not less than one million dollars (\$1,000,000.00) and insuring all activity and conduct of Developer and its employees, agents, and independent contractors during any such entry, including contractual liability coverage. Owner and the City of Hastings shall be named as additional insured on such commercial general liability policy, and Developer shall provide proof of such insurance to Owner, in a form reasonably acceptable to Owner, prior to any such entry. In case any action or proceeding is brought against any of the foregoing indemnified parties by reason of any claim for which Developer is obligated to indemnify the Owner or the City of Hastings, the Developer upon notice from the affected indemnified party shall defend such action or proceeding at the Developer's sole cost and expense by legal counsel reasonably satisfactory to the affected indemnified party. All policies of insurance required hereunder shall require at least 10 days written notice to the Owner before the coverage is terminated or substantially modified. Developer shall not permit any laborer's, materialmen's, mechanic's or other similar liens to be filed on any part of the Real Property, and if any such lien is filed, Developer shall take all steps necessary to release or discharge such lien as promptly as possible.

Section 2. Term. The term of this Agreement and the license granted to Developer hereunder shall begin the date the last party signs this Agreement (the "Effective Date") and shall end on May 31, 2017 ("Work Period"), unless otherwise extended in writing by the parties. All Work performed by the Developer or their agents prior to the Effective Date that is within

the scope of Work authorized by this Agreement is hereby ratified and approved and shall be deemed to have been performed under the Agreement in the same manner and to the same extent as if it had been performed during the Work Period.

Section 3. Assignment. Developer may not assign the rights or obligations under this Agreement, or the license granted hereunder, to any other person or entity without the express written consent of Owner, such consent to be granted or withheld in the sole and exclusive discretion of Owner, and any purported assignment without the consent of Owner shall be void. Notwithstanding the foregoing, Developer may perform the Work using employees, agents, or contractors reasonably acceptable to Developer.

Section 4. Notice of Hazardous Conditions. In the event Developer, through its entry or completion of the Work on the Real Property, gains actual knowledge of any hazardous condition existing within the Real Property that has not previously been disclosed to Developer, Developer shall immediately provide notice to Owner of such conditions and shall undertake all reasonable steps to safeguard persons or property from those hazards.

Section 5. Notices. Any notice required hereunder shall be in writing and mailed by first class mail to the designated recipient at the following addresses provided any emergency or other notification shall be made personally or by telephone as warranted:

Hastings Economic Development
and Redevelopment Authority
Attn: John Hinzman
101 E. 4th Street
Hastings, MN 55033
Telephone: (651) 480-2378
Email: JHinzman@hastingsmn.gov

Confluence Development LLC
Attn: Patrick O. Regan
101 E. 10th Street, Suite 300
Hastings, MN 55033
Telephone: (651) 437-9421
Email: poregan14@hotmail.com

Section 6. Termination. Either Developer or Owner may terminate this Agreement for any reason upon written notice to the other delivered on or before the end of the Work Period defined herein.

Section 7. Costs. Developer shall pay all costs of the Work and Owner shall have no obligation to pay or reimburse Developer for any of those costs.

Section 8. No Amendment or Modification to Purchase Agreement. Nothing herein shall be construed or applied as an agreement by Owner or Developer to modify or amend the terms of the Purchase Agreement.

Section 9. Governing Law. The validity and effect of this Agreement will be determined in accordance with the law of the State of Minnesota and any disputes shall be venued in Dakota County, Minnesota.

**HASTINGS ECONOMIC DEVELOPMENT
AND REDEVELOPMENT AUTHORITY, a
public body corporate and politic under the
laws of the State of Minnesota**

BY: _____
Dennis Peine
Its: President

**CONFLUENCE DEVELOPMENT LLC, a
Minnesota Limited Liability Company**

BY: _____
Its: _____

THIS AGREEMENT DRAFTED BY:

Daniel J. Fluegel
FLUEGEL LAW FIRM P.A.
999 Westview Drive, Suite 1
Hastings, MN 55033
Phone: 651-438-9777
dan@fluegel.com

EXHIBIT A

Legal Description of the Real Property

Lots 1, 2, 3, 4, 5, 6, 7 and the South ninety-eight and five sixths ($98 \frac{5}{6}$ ths) feet of Lot 8, in Block 5; and Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, in Block 6 all in the Town now City of Hastings, Dakota County, Minnesota, together with the vacated alley lying in said Blocks 5 and 6 and together with that part of vacated Eddy Street lying between the extensions of the North and South lines of said Blocks 5 and 6,

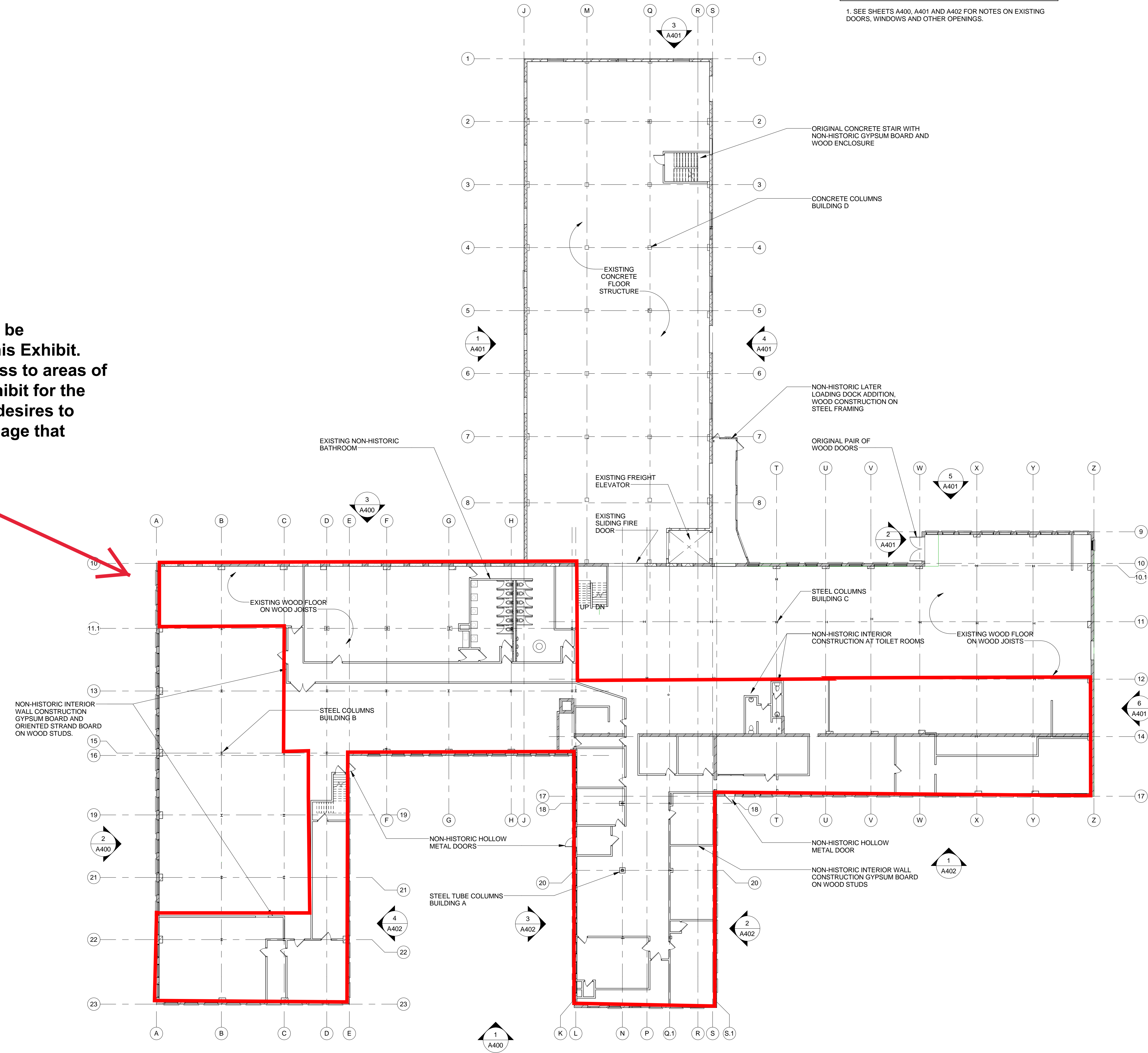
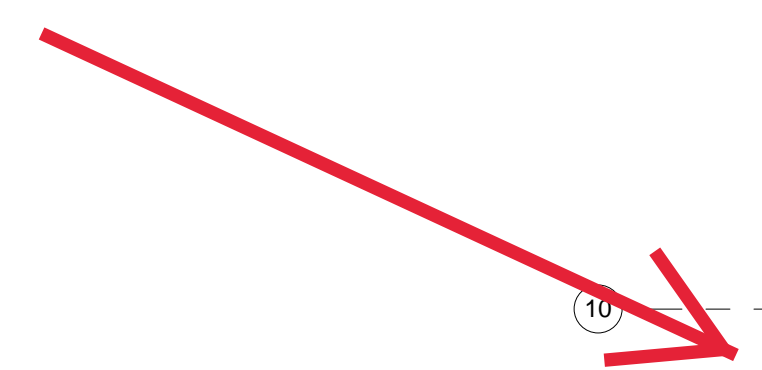
EXCEPT FOR That part of Lots 1, 2, 3, 4, 7, 8 and the vacated alley, Block 5, and Lots 1, 2, 3, 4 and 5, Block 6, Town of Hastings, shown as Parcel 26 on Minnesota Department of Transportation Right of Way Numbered 19-145 as the same on file and of record in the office of the County Recorder in and for Dakota County, Minnesota

Exhibit B

EXISTING CONIDITIONS NOTES

1. SEE SHEETS A400, A401 AND A402 FOR NOTES ON EXISTING DOORS, WINDOWS AND OTHER OPENINGS.

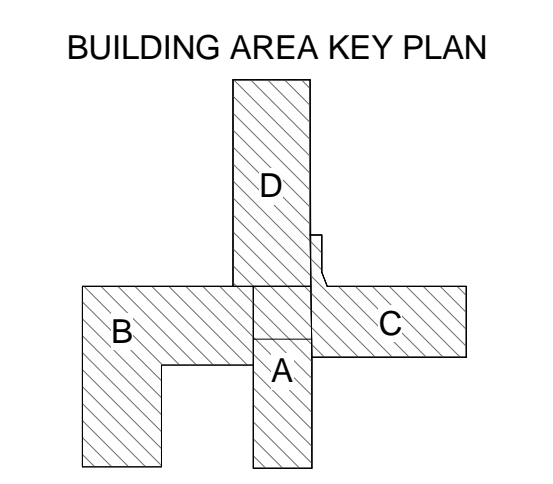
The approximate locations of demolition work to be performed by Developer are outlined in red on this Exhibit. Please note that the Developer may require access to areas of the building other than those marked on this Exhibit for the purpose of storing materials that the Developer desires to retain pending redevelopment (e.g., historic signage that could be used as part of the branding/design).



I hereby certify this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Architect under the laws of the state of MINNESOTA

Date: Reg. No:

NO.	DESCRIPTION	DATE



CONFLUENCE DEVELOPMENT GREAT RIVERS LANDING EXISTING CONDITIONS FIRST FLOOR PLAN

Project number 15039.00
Date 10/20/2015
Drawn by SG
Checked by PA

A101